

213589US-2RD



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION. OF: : GROUP UNIT: 2652  
HIDEAKI FUKUZAWA, ET AL. :  
SERIAL NO.: 09/944,075 : EXAMINER: CHEN, T.  
FILED: SEPTEMBER 4, 2001 :  
FOR: MAGNETORESISTANCE EFFECT :  
ELEMENT

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**RESPONSE TO AN ELECTION OF SPECIES REQUIREMENT**

ASSISTANT COMMISSIONER FOR PATENTS  
WASHINGTON, D.C. 20231

SIR:

In response to the communication dated April 25, 2003, and further in response to the Election of Species Requirement contained therein, Applicants herein provisionally elect the species noted in the requirement to be "Species 1, drawn Fig. 16" and list Claims 1-14, 19, and 20 as being readable thereon.

In addition, Applicants respectfully traverse the Election of Species Requirement as it fails to take into account that there is nothing mutually exclusive as between the film structures illustrated in Figs. 16 and 17 and as it fails to set forth any serious examination burden in terms of searching and examining all of Claims 1-20 together.

With regard to the requirement of mutual exclusivity, note the following from MPEP §806.04(f):

Claims to be restricted to different species must be mutually exclusive. (Emphasis added.)

With regard to the failure to demonstrate any examination burden, note MPEP §803